

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

Case No. 17-03283 (LTS)

(Jointly Administered)

**LIMITED OBJECTION OF U.S. BANK AS TRUSTEE FOR PRIFA BONDS AND
FISCAL AGENT FOR PBA BONDS TO THE SEVENTH AMENDED TITLE III JOINT
PLAN OF ADJUSTMENT OF THE COMMONWEALTH OF PUERTO RICO, ET AL.**²

U.S. Bank National Association (“USBNA”) and U.S. Bank Trust National Association (“USBTNA”, and collectively with USBNA, “U.S. Bank”) (“U.S. Bank” or the “Trustee” or “Fiscal Agent”) as (i) Fiscal Agent for bonds issued by the Puerto Rico Public Buildings Authority (“PBA”), and (ii) as Trustee for certain bonds issued by Puerto Rico Infrastructure Financing Authority (“PRIFA”), hereby submits this limited objection to the *Seventh*

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² Counsel for the FOMB granted U.S. Bank a limited extension until October 21, 2021 to file this objection.

Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et. al. (Dkt. No. 17627) (the “Plan”)³ and respectfully states as follows:

PRELIMINARY STATEMENT

1. U.S. Bank as Fiscal Agent for bonds issued by PBA (the “PBA Bonds” defined below) and as Trustee for certain bonds issued by PRIFA (the “PRIFA Bonds” as defined below) does not object to the confirmation of the substantive settlements or the treatment agreed to by the PBA and PRIFA bondholders which are addressed in the Plan.

2. The Plan addresses the treatment of the PBA Bonds and the PRIFA Bonds through various provisions and plan support agreements. The Plan also provides “that distributions to be made pursuant to the Plan are intended to be inclusive of any and all Trustee/Fiscal Agent fees and expenses which may be allegedly due and owing by the Commonwealth and PBA with respect to amounts discharged pursuant to the Plan.” Plan, Section 77.13. The definition of “Trustee/Fiscal Agent” in the Plan does not include US Bank as trustee or fiscal agent for the PBA Bonds or the PRIFA bonds.

3. U.S. Bank submits this objection to the Plan on the limited basis that the Plan fails to adequately provide for the payment of fees, costs and indemnity rights of U.S. Bank as Trustee and Fiscal Agent which are owed by PBA/the Commonwealth and PRIFA whether for costs incurred prior to or in connection with implementation of the Plan. Payment of these amounts are contractual obligations of PBA/the Commonwealth and PRIFA, but under the structure of the Plan, U.S. Bank as Trustee and U.S. Bank as Fiscal Agent is not assured of payment from distributions for fees, costs and indemnity obligations. Thus, the Plan seeks discharge of the obligations arising in connection with the PBA Bonds and PRIFA Bonds but

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

does not properly provide for satisfaction of the Trustee-related or Fiscal Agent-related obligations.⁴

4. U.S. Bank has proposed the following language for addition to the Plan or the Confirmation Order to protect its rights, and ensure it is protected for facilitating the implementation of the Plan:⁵

Notwithstanding anything in the Plan or the Confirmation Order to the contrary, including without limitation Sections 77.13, 92.2, 92.3, 92.5, 92.6, 92.7 of the Plan and the Qualifying Modification Pursuant to PROMESA Title VI for the Puerto Rico Infrastructure Financing Authority, including without limitation Section 15.3 thereof (the “Qualifying Modification”), U.S. Bank National Association (“USBNA”) and U.S. Bank Trust National Association (“USBTNA”, and collectively with USBNA, “U.S. Bank”) as (i) Fiscal Agent for the PBA Bonds, and (ii) as Trustee for the PRIFA Bonds, shall retain all rights related to the payment of its fees and costs, including fees and costs of outside counsel, and all rights to indemnity claims against the Commonwealth, PBA and PRIFA arising under or in connection with the PBA Bonds and the PRIFA Bonds, and such rights are preserved and enforceable in accordance with (x) that certain PBA Resolution No. 468 adopted June 22, 1995 (collectively, with all supplements, subsequent resolutions and amendments thereto, the “1995 Resolution”) and PBA Bond Resolution No. 77, adopted on November 16, 1970 (collectively, with all supplements, subsequent resolutions and amendments thereto, “Resolution 77” and collectively, with the 1995 Resolution, the “PBA Bond Resolutions”), and that certain Trust Agreement between PRIFA and Citibank, N.A. dated as of October 1, 1988 (the “PRIFA Trust Agreement”), as amended or supplemented from time to time, and all additional documents related to the PBA Bonds and the PRIFA Bonds (collectively, with the PBA Bond Resolutions and the PRIFA Trust Agreement, the “Bond Documents”) and (y) any

⁴ U.S. Bank is party to that certain Settlement Agreement and Invoice Instructions entered into December 21, 2018 between AAFAF, for itself and for PBA and PRIFA, and U.S. Bank as Fiscal Agent or Trustee, which provides for the use of funds held by U.S. Bank as Trustee or Fiscal Agent in specific accounts for payments of fees and cost which U.S. Bank will retain and apply to fees and costs until its obligations are satisfied. U.S. Bank seeks ratification that its right to payment and indemnity will be preserved for all amounts to which it is entitled under the respective debt documents as to PBA and PRIFA notwithstanding the relevant provisions of the Plan, either pursuant to the Settlement Agreement referenced above or otherwise.

⁵ U.S. Bank also supports the inclusion of language provided to the Oversight Board by counsel for The Bank of New York Mellon, amending Paragraphs 23 and 29 of the proposed Confirmation Order.

contractual fee agreements between the Commonwealth, PBA, PRIFA and U.S. Bank (including without limitation the Fee Settlement Agreement and Invoice Instructions dated as of December 21, 2018 by and between, *inter alia*, U.S. Bank, AAFAF, PBA and PRIFA (the “Fee Settlement Agreement” together with any such contractual fee agreements, collectively, the “U.S. Bank Fee Contracts”), and any such rights and claims shall remain preserved and enforceable and are not released or discharged as a result of the Confirmation and Effective Date of the Plan until such fees, costs, and indemnity claims are paid in full in accordance with the applicable Bond Documents and the U.S. Bank Fee Contracts, provided however, that payment of all such rights and claims against the Commonwealth, PBA and PRIFA shall be limited to payment from funds held by U.S. Bank in its capacity as Trustee for the PRIFA Bonds and Fiscal Agent for the PBA Bonds.

JURISDICTION AND VENUE

5. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this Motion pursuant to PROMESA section 306(a).

6. Venue is proper in this district pursuant to PROMESA section 307(a).

FACTUAL BACKGROUND

7. U.S. Bank serves as fiscal agent for the PBA Bonds listed in this footnote totaling approximately \$4 billion in outstanding principal amount plus interest, and accrued fees and costs.⁶

⁶ Government Facilities Revenue Refunding Bonds, Series 2002 C, Government Facilities Revenue Bonds, Series 2002 D, PBA Government Facilities Revenue Refunding Bonds, Series 2002 F, Government Facilities Revenue Bonds, Series 2002 G, Government Facilities Revenue Bonds, Series 2002 H, PBA Government Facilities Revenue Bonds, Series 2004 I, PBA Government Facilities Revenue Refunding Bonds, Series 2004 K, Government Facilities Revenue Bonds, Series 1993 L, PBA Government Facilities Revenue Refunding Bonds, Series 2007 M, Government Facilities Revenue Bonds, Series 2007 N, PBA Government Facilities Revenue Refunding Bonds, Series 2009 P, PBA Government Facilities Revenue Refunding Bonds, Series 2009 Q, PBA Government Facilities Revenue Bonds, Series 2011R (Qualified School Construction Bonds - Issuer Subsidy), PBA Government Facilities Revenue Bonds, Series 2011 S, PBA Government Facilities Revenue Bonds, Series 2011 T (Qualified Zone Academy Bonds - Direct Payment), PBA Government Facilities Revenue Refunding Bonds, Series 2012 U, and PBA Authority Series L Revenue Refunding Bonds 4.20% 7/1/1997 (collectively, the “PBA Bonds”).

8. Under PBA Resolution § 815, the PBA is liable for payment of the Fiscal Agent's fees and costs, including annual charges and extraordinary costs, and for the fees and costs of its outside counsel, as well as for indemnity claims arising from the performance of U.S. Bank's duties as Fiscal Agent (collectively, the "PBA Fiscal Agent's Fees and Costs"). Under the Plan, the Fiscal Agent is tasked with distributing funds to bondholders provided for under the Plan but is not assured of payment for the PBA Fiscal Agent's Fees and Costs from the distributions. The Fiscal Agent objects to the Plan on the limited basis that the Plan does not make adequate provision for payment of the PBA Fiscal Agent's Fees and Costs while seeking to discharge the PBA Bond debt.

9. U.S. Bank also serves as successor trustee to the PRIFA Special Tax Revenue Bonds, Series 2005A, Series 2005B, Series 2005C, and Series 2006 (collectively the "PRIFA Bonds"), totaling approximately \$2 billion in outstanding principal, interest and accrued fees and costs. The PRIFA Bonds are alleged to be secured by certain proceeds of U.S. rum sales tax revenues, which are paid annually to the Commonwealth, for the benefit of PRIFA and the PRIFA Bondholders.

10. Under the PRIFA Trust Agreement § 804, PRIFA is liable for payment of the Trustee's fees and costs, including annual charges and extraordinary costs, and for the fees and costs of its outside counsel, as well as for indemnity claims arising from the performance of U.S. Bank's duties as Trustee (collectively, the "PRIFA Trustee's Fees and Costs"). Under the Plan, the Trustee is tasked with distributing funds to bondholders provided for under the Plan but is not assured of payment for the Trustee's Fees and Costs from the distributions. The Trustee will raise this issue in connection with the PRIFA Title VI proceeding described below, but objects to the Plan on the limited basis that the Plan does not make adequate provision for

payment of the PRIFA Trustee's Fees and Costs while seeking to discharge the PRIFA Bond debt.

11. On May 3, 2017, the Financial Oversight Management Board of Puerto Rico (the “FOMB”) filed a petition commencing a proceeding on behalf of the Commonwealth of Puerto Rico (the “Commonwealth”) under Title III of PROMESA. On September 27, 2019, the FOMB filed a petition commencing a proceeding on behalf of PBA under Title III of PROMESA (together with the Commonwealth’s Title III Case, the “Title III Cases”). No Title III case has been filed for PRIFA, but a Title VI proceeding to effectuate a qualifying modification of the PRIFA Bonds has been filed.

12. On May 18, 2018, U.S. Bank, as successor trustee for the PRIFA Bonds, filed a Master Proof of Claim against the Commonwealth, and asserted claims for contingent, unliquidated amounts for interest payable in the future, interest accrued and accruing in the future as to past due principal and interest, fees and costs and indemnity claims of the Trustee to be incurred in the future under the bond documents and all other amounts owed on account of any and all claims the Trustee had or may have relating to the outstanding bond obligations, whether known or unknown against the Commonwealth and all those purporting to act on the Commonwealth’s behalf, including claims for or based upon the breach or violation of the trust agreement or any covenants or other contractual obligations contained in the trust agreement or claims arising from the improper diversion of the Pledged Revenues or any other property securing the payment of the bonds as a matter of relevant state or federal law. [Claim No. 13386].

13. No objection has been filed to Claim No. 13386.

14. On June 27, 2018, U.S. Bank, as Fiscal Agent for the PBA Bonds, filed a Master Proof of Claim against the Commonwealth for all outstanding amounts related to the PBA Bonds under the bond resolutions, whether contingent or non-contingent, due or owing, currently or in the future, including, but no limited to, principal, interest, premiums, default interest, charges, fees, expenses, disbursements, indemnifications and any other claim arising under the bond documents, all outstanding rental payments and all other prepetition amounts due to PBA under or in connection with the PBA leases, all outstanding administrative priority claims for all outstanding post-petition rental payments and other post-petition amounts due under or in connection with the PBA leases. The Fiscal Agent also asserted contingent, unliquidated amounts for interest payable in the future, interested accrued and accruing in the future as to past due principal and interest, fees and costs and indemnity claims of the Fiscal Agent to be incurred in the future under the bond documents. [Claim No. 62833].

15. No objection has been filed to Claim No. 62833.

16. On July 29, 2020 U.S. Bank, as Fiscal Agent for the PBA Bonds, filed a Proof of Claim against PBA for all outstanding amounts related to the PBA Bonds under the bond resolutions, whether contingent or non-contingent, due or owing, currently or in the future, including, but no limited to, principal, interest, premiums, default interest, charges, fees, expenses, disbursements, indemnifications and any other claim arising under the bond documents, all outstanding rental payments and all other prepetition amounts due to PBA under or in connection with the PBA leases, all outstanding administrative priority claims for all outstanding post-petition rental payments and other post-petition amounts due under or in connection with the PBA leases. The Fiscal Agent also asserted contingent, unliquidated amounts for interest payable in the future, interested accrued and accruing in the future as to past

due principal and interest, fees and costs and indemnity claims of the Fiscal Agent to be incurred in the future under the bond documents. [Claim No. 174834].

17. No objection has been filed to Claim No. 174834]

18. On July 30, 2021, the FOMB filed the *Seventh Amended Title III Joint Plan of Adjustment of The Commonwealth of Puerto Rico, Et. Al.* (the “Seventh Amended Plan of Adjustment” or “Plan”) [Dkt. 17627], along with the accompanying *Disclosure Statement for the Seventh Amended Title III Joint Plan of Adjustment for the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Buildings Authority* (the “Disclosure Statement”) [Dkt. 17628].⁷

19. On August 2, 2021, the court entered an order approving the Disclosure Statement and setting a hearing on confirmation of the Plan. The Plan Confirmation Hearing is scheduled for November 8-22, 2021. *Notice of (I) Approval Of Disclosure Statement, (II) Establishment of Record Dates, (III) Hearing on Confirmation of the Plan of Adjustment and Procedures for Objection to Confirmation of The Plan of Adjustment, (IV) Procedures and Deadline For Voting on the Plan of Adjustment and Making Certain Elections Thereunder* [Dkt. 17643].

20. On August 2, 2021, the court entered the *Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [Dkt. 17640]. U.S. Bank submits this objection in accordance with the procedures established in that motion.

⁷ Prior to the Seventh Amended Plan of Adjustment, the FOMB filed a number of other amended plans, including the *Third Amended Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.*, (the “Third Amended Plan of Adjustment”) [ECF No. 16740] and the *Disclosure Statement for the Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (“Third Amended Disclosure Statement”) [ECF No. 16741]. U.S. Bank, as Trustee and Fiscal Agent, filed objections to the Third Amended Disclosure Statement on behalf of the PBA Bonds and the PRIFA Bonds. [Dkt. Nos. 16981, 16983]. These filings included objections regarding the lack of information regarding the trustees’ and fiscal agents’ rights and the ability to assert fees and costs to be paid pursuant to the Plan.

LIMITED OBJECTION

21. The Plan effectuates the discharge of claims against the Commonwealth for bonds issued by PBA and PRIFA and provides for recoveries for holders of those bonds including cash and other consideration. *See* Plan Sections 5.1, 6.1, 7.1, 8.1, 9.1, 11.1, 12.1, 13.1, 14.1, 15.1 65.1, 65.2, 92.2, 92.3, 92.5, 92.6, and 92.7. As the Plan is currently presented, while the PBA and PRIFA bond obligations are discharged, U.S. Bank's fees and costs and indemnity rights are not assured of payment.

22. At present, payments to U.S. Bank as Trustee or Fiscal Agent by PRIFA or PBA for fees and costs are relatively current under the terms of the Settlement Agreement, but U.S. Bank is entitled to full satisfaction of its fees and costs until it is fully discharged from its duties and liabilities as Fiscal Agent or Trustee.

23. Finally, the releases and exculpations in the Plan do not provide a release for the either the PRIFA Trustee or the PBA Fiscal Agent. U.S. Bank thus seeks an order assuring a reserve for any indemnity claims for which the Commonwealth, PBA or PRIFA may be liable to it as PBA Fiscal Agent or PRIFA Trustee.

WHEREFORE, U.S. Bank respectfully requests that the Plan or the Confirmation Order confirming the Plan be amended to include explicit recognition that (i) payment of the PBA Fiscal Agent Fees and Costs and the PRIFA Trustee Fees and Costs are permitted under the Settlement Agreement in accordance with its terms, notwithstanding the confirmation of the Plan or the PRIFA Title VI Qualifying Modification, (ii) that if necessary, alternative means for satisfying the PBA Fiscal Agent Fees and Costs and the PRIFA Trustee Fees and Costs be determined as a condition to Plan confirmation, such as payment directly by PBA or PRIFA to the Fiscal Agent or Trustee of amounts due out of cash consideration distributed to

bondholders; and (iii) barring discharge of the obligations arising against the Commonwealth, PBA and PRIFA relating to the PBA Bonds and the PRIFA Bonds until such Fees and Costs are satisfied.

WHEREFORE for the avoidance of doubt, this Plan Objection also serves as an objection to the Proposed Confirmation Order.

Respectfully submitted,

Dated: October 21, 2021

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and/or Fiscal Agent*

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of October 2021 I filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case.

San Juan, Puerto Rico

By: *Iris J. Cabrera-Gomez*

Iris J. Cabrera-Gomez